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NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JAMES M. KELLEY, MIKI W. LARSSON, and DOUGLAS B. KELLEY Plaintiffs, v. RAMBUS, INC., et al., Defendants.	Case Number C 07-01238 JF ORDER ¹ GRANTING MOTION TO DISMISS WITH LEAVE TO AMEND [re: docket nos. 99, 102, 105, 108, 109, 113, 118]
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Defendants Rambus, Inc. (“Rambus”), Pricewaterhouse Coopers (“PwC”), Wilson Sonsini Goodrich & Rosati (“WSGR”), John Danforth, Robert Eulau, and Edward Larsen (collectively “Defendants”) move to dismiss the Consolidated Complaint filed by Plaintiffs, James M. Kelley, Miki W. Larsson, and Douglas B. Kelley (collectively, “Plaintiffs”). For the reasons discussed below, the motion will be granted with leave to amend.

I. BACKGROUND

Plaintiffs James M. Kelley and Miki W. Larsson initiated this action on March 1, 2007, alleging that they are Rambus shareholders who were damaged as a result of fraud on the part of Defendants. After filing their initial complaint, James M. Kelley and Larsson proceeded to

¹ This disposition is not designated for publication and may not be cited.

1 amend their complaint three times without seeking leave of this Court or Defendants' consent.
 2 Plaintiff Douglas B. Kelley filed his complaint on May 8, 2007, and amended it as of right on
 3 June 15, 2007. The Court consolidated the two actions on June 25, 2007 and set a filing date for
 4 a consolidated complaint and a briefing schedule for any motion to dismiss. Plaintiffs filed their
 5 Consolidated Complaint on July 24, 2007. Defendants subsequently moved to dismiss the
 6 Consolidated Complaint pursuant to the Private Securities Litigation Reform Act of 1995 (the
 7 "PSLRA"), and Fed. R. Civ. Pro. 8, 9(b) and 12(b)(6) on August 10, 2007. The Court heard oral
 8 argument on September 7, 2007.

9 **II. LEGAL STANDARD**

10 A complaint may be dismissed for failure to state a claim upon which relief can be
 11 granted for one of two reasons: (1) lack of a cognizable legal theory or (2) insufficient facts
 12 under a cognizable legal theory. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Robertson v.*
 13 *Dean Witter Reynolds, Inc.*, 749 F.2d 530, 533-34 (9th Cir. 1984). For purposes of a motion to
 14 dismiss, all allegations of material fact in the complaint are taken as true and construed in the
 15 light most favorable to the nonmoving party. *Clegg v. Cult Awareness Network*, 18 F.3d 752,
 16 754 (9th Cir. 1994). A complaint should not be dismissed "unless it appears beyond doubt the
 17 plaintiff can prove no set of facts in support of his claim that would entitle him to relief." *Clegg*,
 18 18 F.3d at 754. However, the Court "is not required to accept legal conclusions cast in the form
 19 of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged." *Id.*
 20 at 754-55. Motions to dismiss generally are viewed with disfavor under this liberal standard and
 21 are granted rarely. *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 249 (9th Cir. 1997).

22 **III. DISCUSSION**

23 Defendant Rambus moves to dismiss Plaintiffs' Consolidated Complaint pursuant to the
 24 PSLRA and Fed. R. of Civ. Pro. 8, 9(b) and 12(b)(6). Defendants' PwC, WSGR, John Danforth,
 25 Robert Eulau, and Edward Larsen join in the motion.

26 Federal Rule of Civil Procedure 8 ("Rule 8") requires that claims be set out in short and
 27 plain terms. Plaintiffs' Consolidated Complaint is 228 pages in length (295 pages with exhibits)
 28 and contains 735 paragraphs. In addition, on August 3, 2007, Plaintiffs filed a request for

1 judicial notice of 842 pages of additional documents in support of their Consolidated Complaint
 2 without explanation as to how these documents support the Consolidated Complaint. Defendants
 3 argue that the Consolidated Complaint violates Rule 8 because it “is a morass of allegations
 4 regarding, *inter alia*, an alleged ‘scheme of option backdating and spring-loading,’ a ‘submarine
 5 patent scheme,’ various infringement suits and regulatory actions, a bond offering, and alleged
 6 insider trading.” Rambus Motion To Dismiss Consolidated Complaint (“Rambus Motion”),
 7 6:18-21. Defendants also assert that, “[l]oaded with multiple theories of conspiracies and
 8 wrongdoing, the [Consolidated] Complaint requires Rambus Defendants (and the Court) to jump
 9 back and forth to try to piece together the bases of Plaintiffs’ numerous claims.” *Id.*, 6:21-23.
 10 Finally, Defendants argue that, “[i]n their maze-like allegations spanning 13 years, plaintiffs
 11 lump all defendants together without specifying which defendant knew what when, to the point
 12 that some defendants are charged with statements made long before they joined or after they left
 13 Rambus.” *Id.*, 7:9-12. Plaintiffs claim that such length is required to meet the heightened
 14 pleading standard of the PSLRA. Plaintiffs also argue that paragraphs 1 and 2 of the
 15 Consolidated Complaint comply with the requirements of Rule 8.

16 The judges of this court previously have dismissed securities class-action complaints for
 17 violations of Rule 8. See *In re LeapFrog Enters., Inc. Sec. Litig.*, No. C-03-05421, 2006 WL
 18 2192116 (N.D. Cal., Aug. 1, 2006); *In re Cornerston Propane Partners, L.P.*, 335 F. Supp. 2d
 19 1069, 1081 (N.D. Cal. 2005); *In re Splash Tech. Holdings, Inc. Sec. Litig.*, 160 F. Supp. 2d 1059,
 20 1075 (N.D. Cal. 2001); *In re Autodesk, Inc. Sec. Litig.*, 132 F. Supp. 2d 833, 842 (N.D. Cal.,
 21 2000); *Cooperstone v. TCSI Corp.*, No. C 97-3495, 1999 WL 33295869 (N.D. Cal. Jan. 19,
 22 1999). In *In re Leapfrong Enters., Inc. Sec. Litig.*, 2006 WL 2192116 at *1, the court expressed
 23 “concern that the manner which the 147-page consolidated amended complaint is arranged makes
 24 it difficult, if not impossible, to evaluate the pleadings and determine whether the requirements
 25 of the [PSLRA] are met.” This Court shares the same concern in the instant case. The
 26 heightened pleading standard is not an invitation to adopt a “kitchen-sink” approach to a
 27 pleading. Indeed, in another context requiring heightened pleading, the Ninth Circuit has noted
 28 that “[a] heightened pleading standard is not an invitation to disregard’s Rule 8’s requirement of

simplicity, directness, and clarity.” *McHenry v. Renne*, 84 F.3d 1172, 1178 (9th Cir. 1996).

Further, the Court agrees with the Defendants that the Consolidated Complaint does not clearly define which allegations are asserted against whom. *See In re Cornerstone Partners*, L.P., 335 F. Supp. 2d at 1081 (“[F]ormat provides no clear sense of time line of defendants’ alleged knowledge, nor particularized allegations as to the reasons for any given statement’s alleged falsity.”). For example, paragraph 1 of the Consolidated Complaint states that Defendants Rambus, PwC, and WSGR “colluded with one another in violation of their duties” and then provides a laundry list of alleged fraudulent activity without any indication of which party participated in the activity or how they colluded. Paragraph 2 of the Consolidated Complaint states that Defendants Dunlevie, Davidow, Geschke, Tate, and Mooring participated in an “ambush patent scheme.” The remainder of the Consolidated Complaint appears to discuss these allegations, but it does not address how individual participants are tied into the allegations.

Viewed as a whole, the Consolidated Complaint requires both Defendants and the Court to guess as to which parties were involved in which allegedly fraudulent activity. In essence, the Consolidated Complaint appears to be a statement that wrongdoing occurred, that all Defendants somehow were involved, and that Plaintiffs therefore are entitled to damages. However, as the Supreme Court recently held, “a plaintiff’s obligation to provide the grounds of his entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do . . . Factual allegations must be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-5 (2007). Because the Consolidated Complaint falls well short of this standard, it violates Rule 8.²

² As Defendants note in their papers, because the Consolidated Complaint violates Rule 8, it is difficult if not impossible to discern what facts support Plaintiffs' allegations and thus which of Defendants' arguments have merit. However, the Court advises Plaintiffs to consider the arguments made by Defendants pursuant to Fed. R. Civ. Pro. 12(b)(6) in carefully drafting any future amended complaint.

IV. ORDER

Good cause therefor appearing, IT IS HEREBY ORDERED that Defendants' motion to dismiss the Consolidated Complaint is GRANTED. Because this is the first motion to dismiss decided by the Court and because Plaintiffs are acting *pro se*, the Court will grant Plaintiffs leave to amend. Any amended complaint shall not exceed fifty (50) pages in length (exclusive of exhibits). Plaintiffs' request for judicial notice of 842 pages of additional documents filed by Plaintiffs without explanation is DENIED. Any amended complaint shall be filed within thirty (30) days of the date of this Order.

DATED: October 15, 2007.


JEREMY FOGEL
United States District Judge

1 This Order has been served upon the following persons:

2 James M Kelley
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